

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:
DBVR ROCKVILLE LP d/b/a/ Dr. Boyd's
Veterinary Resort

Applicant

John O. Wesson, DVM

Victoria Bryant

David A. Nelson

John Rubin

Robin Menge

Tracy Seymour

For the Petition

Soo Lee-Cho, Esquire

Attorney for the Applicant

Before: Lynn A. Robeson, Hearing Examiner

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OZAH Case No. CU 17-15

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

Filed on May 2, 2017, the Applicant, DBVR Rockville LP d/b/a Dr. Boyd's Veterinary Resort (Dr. Boyd's or Applicant), seeks a conditional use for an animal boarding and care facility at 11503 Rockville Pike, Rockville, Maryland, under Section 59.3.5.1.B.2 of the Zoning Ordinance.¹ The property lies within the CR 4.0, C 3.5, R 3.5, H 300 Zone. The Office of Zoning and Administrative Hearings (OZAH) scheduled a public hearing to be held on August 18, 2017. Exhibit 25.

Staff of the Montgomery County Planning Department (Technical Staff or Staff) issued a report recommending approval of the application on June 30, 2017, subject to seven conditions (Exhibit 27(a)):

1. Conditional Use approval is limited to a maximum 12,496-square-foot cat and dog boarding and care facility for no more than 200 pets.
2. The facility may be open and accessible to pet owners 24-hours a day, every day of the year.
3. The Applicant must establish staggered work schedules for all employees to ensure that no more than two employees leave the facility within the weekday morning peak period (6:30 to 9:30 a.m.) and no employees arrive or leave (unless in the event of an emergency) within the weekday evening peak period (4:00 to 7:00 p.m.)
4. No animals may be walked or exercised in outdoor areas that are beyond the limits of the commercial retail center while being boarded and/or receiving medical treatment at the veterinary resort.
5. The outdoor exercise yard/dog run must not be used before 7:00 a.m., and after 9:00 p.m., seven days a week.
6. The waste and runoff from the outdoor exercise yard must not be directly or indirectly discharged into a storm drain or other channel that may drain to the local stream. Applicant must implement the animal waste management, clean-up and disposal protocols for the outdoor exercise yard as shown on the revised Conditional Use Plan and as described in the revised Statement of Justification, both dated June 22, 2017.

¹ All citations in this Decision are to the 2014 Zoning Ordinance for Montgomery County, adopted September 30, 2014 (Ordinance No. 17-52), as amended.

7. The Applicant must revise plans as follows:

- a) Prior to issuance of the Certificate of Occupancy, the Applicant must provide certification to Staff from a qualified professional that the exterior lighting conforms to the latest Illuminating Engineering Society of North America (IESNA) recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded) for a development of this type.
- b) All on-site down-lights must have cut-off fixtures.
- c) All existing and proposed fixtures must have deflectors to prevent excess illumination and glare.
- d) Illumination levels generated from on-site lighting must not exceed 0.5 footcandles (fc) at any property line abutting residentially developed properties.
- e) Streetlights and other pole-mounted lights must not exceed the height illustrated on the details sheet of the Conditional Use Plan.

8. Prior to issuance of the Certificate of Occupancy, all landscaping on the Applicant's Landscape Plan must be planted as shown.

The Planning Board recommended approval as well. At Dr. Boyd's request, the Planning Board recommended changing Condition No. 6 to read as follows (Exhibit 27):

6. The waste and runoff from the outdoor exercise yard must not be directly or intentionally discharged into a storm drain or other channel that may drain to the local stream. Applicant must implement the animal waste management, clean-up and disposal protocols for the outdoor exercise yard as shown on the revised Conditional Use Plan and as described in the revised Statement of Justification, both dated June 22, 2017.

The August 18, 2017, public hearing proceeded as scheduled. Dr. John Wesson, DVM, described the proposed operation of the Rockville facility, which is based on two existing clinics in Davis and Irvine, California. The Applicant presented six expert witnesses. Ms. Victoria Bryant, an expert in land planning, Mr. David Nelson, an expert in transportation planning and traffic engineering, Ms. Robin Menge, an expert in commercial interior design, and Ms. Tracey Seymour, an expert in acoustical engineering. A summary of their testimony is included in this Report where pertinent.

At the public hearing, the Applicant introduced an amended landscape plan for the facility. Exhibit 31(a). At the request of the Hearing Examiner, the Applicant agreed to show existing

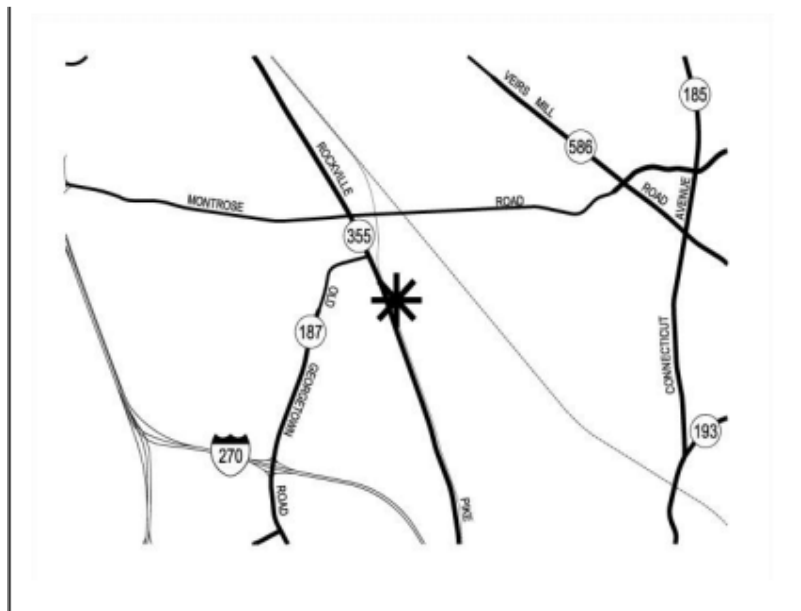
bicycle storage spaces on the amended Conditional Use Plan. T. 123-124. The Applicant submitted the revised plan on August 21, 2017. Exhibit 45(a). The Hearing Examiner kept the record open until September 1, 2017, to permit Planning Staff an opportunity to comment on the proposed changes to the landscaping (as required by Section 59-7.3.1.D.3.b of the Zoning Ordinance.) Exhibit 44. Staff advised that the revised plans did not affect their recommendation of approval and the record closed on September 1, 2017. Exhibit 46.

For the following reasons, the Hearing Examiner approves the conditional use application, subject to the conditions listed in Part IV of this Report and Decision (Decision.)

II. FACTUAL BACKGROUND

A. The Subject Property

The subject property is located on a 1.6-acre recorded lot in the northeast quadrant of the intersection of Rockville Pike and Nicholson Lane. Exhibit 26(c). A vicinity map from the Staff Report (Exhibit 27(a)) shows the property's general location:



Abutting the property, Rockville Pike is a six-lane, divided major highway with a master-planned right-of-way of 162 feet, and Nicholson Lane is a four-lane arterial road with a master-

planned right-of-way of 90 feet. The property is within ¼ mile of the White Flint Metro Station. Exhibit 27(a), p. 4. The property is highly developed, improved with a one-story retail building of approximately 20,496 square feet (formerly a Staples office supply store) and associated surface parking. Two existing curb cuts provide access from the northbound side of Rockville Pike. There is a third access from Nicholson Lane along the east side of the property. Staff advises that there are 112 existing surface parking spaces. Exhibit 27(a), p. 3. A men's clothing store will occupy approximately 8,000 square feet of the existing building.

The aerial photograph below shows the current improvements on the property, which is highlighted in red (Exhibit 27(a), p. 3):

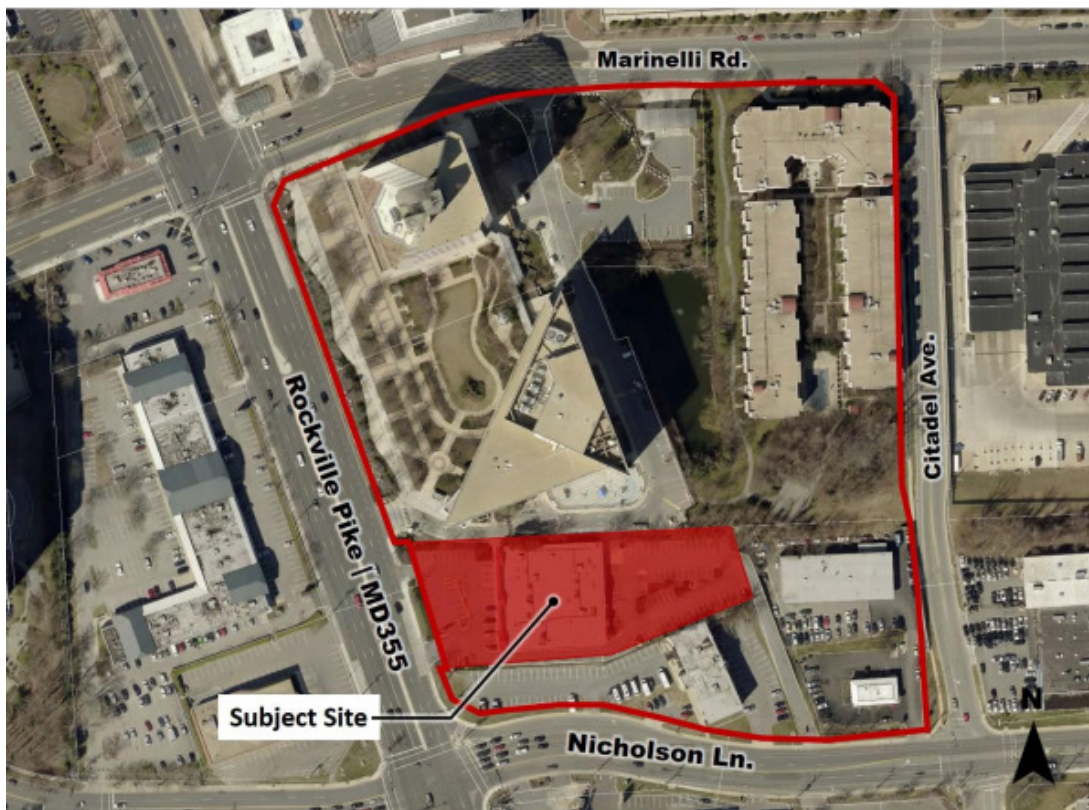


The property was originally subdivided in 1956, before a preliminary plan or site plan were required. The Planning Board has approved a Sketch Plan for redevelopment of the property (Sketch Plan No. 320140010) with 1.64 million square feet of mixed-use development. Exhibit

27(a). Dr. Boyd's holds a 10-year lease on the conditional use area with renewable terms. Exhibit 3.

B. Surrounding Area

For the purpose of determining the compatibility of the proposed use, it is necessary to delineate and characterize the "surrounding area" (i.e., the area that will be directly impacted by the proposed use.) Staff determined that surrounding area consisted of the block containing the proposed use: Marinelli Road to the north, Citadel Avenue/Huff Court to the east, Nicholson Lane to the south, and Rockville Pike/MD 355 to the west, as shown on the graphic from the Technical Staff Report (Exhibit 27(a), below):



Staff characterized the area as a mix of commercial and retail shopping centers, mid-rise office buildings, auto-related uses, multi-family housing and off-street surface parking lots. The Nuclear Regulatory Commission office building is to the north, along with Strathmore Court, a

multi-family building. One-story retail buildings predominate to the east of the site. All properties within Staff's defined area are zoned CR.

Dr. Boyd's expert in land planning, Ms. Victoria Bryant, opined that the boundaries of the surrounding area were somewhat larger than those defined by Staff. According to her, the boundaries are Executive Boulevard to the south, Citadel Avenue/Huff Court to the east, Marinelli Road to the north, and Woodglenn Drive to the west, outlined in red on an aerial photograph submitted by Dr. Boyd (T. 93; Exhibit 18, below):



Ms. Bryant opined that the larger “surrounding area” is more appropriate due to traffic impacts from the use. T. 93. In her opinion, the larger area consists of 1980's type commercial development, with larger buildings with some parking and green space. The entire area lies within

the C/R Zone, with development potential between 3 to 4 FAR. The area is beginning to redevelop under the newer zoning categories under the *2010 White Flint Sector Plan* (Sector Plan or Plan.)

The Hearing Examiner agrees with Ms. Bryant that the surrounding area should be larger than that delineated by Staff. The surrounding area is defined as the area that will experience the direct, potentially negative, impacts of the proposed use. While the Hearing Examiner recognizes that the Nicholson Lane and Md. Route 355 dilute the negative traffic impacts to surrounding properties, traffic to and from the site will likely impact the larger area defined by Ms. Bryant, given that access from Md. Route 355 is for northbound traffic only.

Both Ms. Bryant and Staff characterized the area as a mix of retail, commercial office and multi-residential uses, with some auto-related uses, all of which are now in the CR Zone. T. 93. The Hearing Examiner agrees and adds that there are some institutional office uses (i.e., the Nuclear Regulatory Commission) in a developed area that is now undergoing redevelopment under the Sector Plan.

C. Proposed Use

The Applicant proposes to operate a veterinary hospital, which does not require a conditional use approval in the CR Zone, and an animal boarding and care facility, which does require approval of a conditional use. Both uses will be housed in approximately 12,496 square feet of an existing retail building. Exhibit 27(a). Dr. Boyd's lease extends for 10 years, with options to renew. T. 17. Except for conversion of 16 parking spaces on the east side to a dog exercise area, the Applicant proposes no exterior changes to the existing structure. According to Staff (Exhibit 27(a), p. 5):

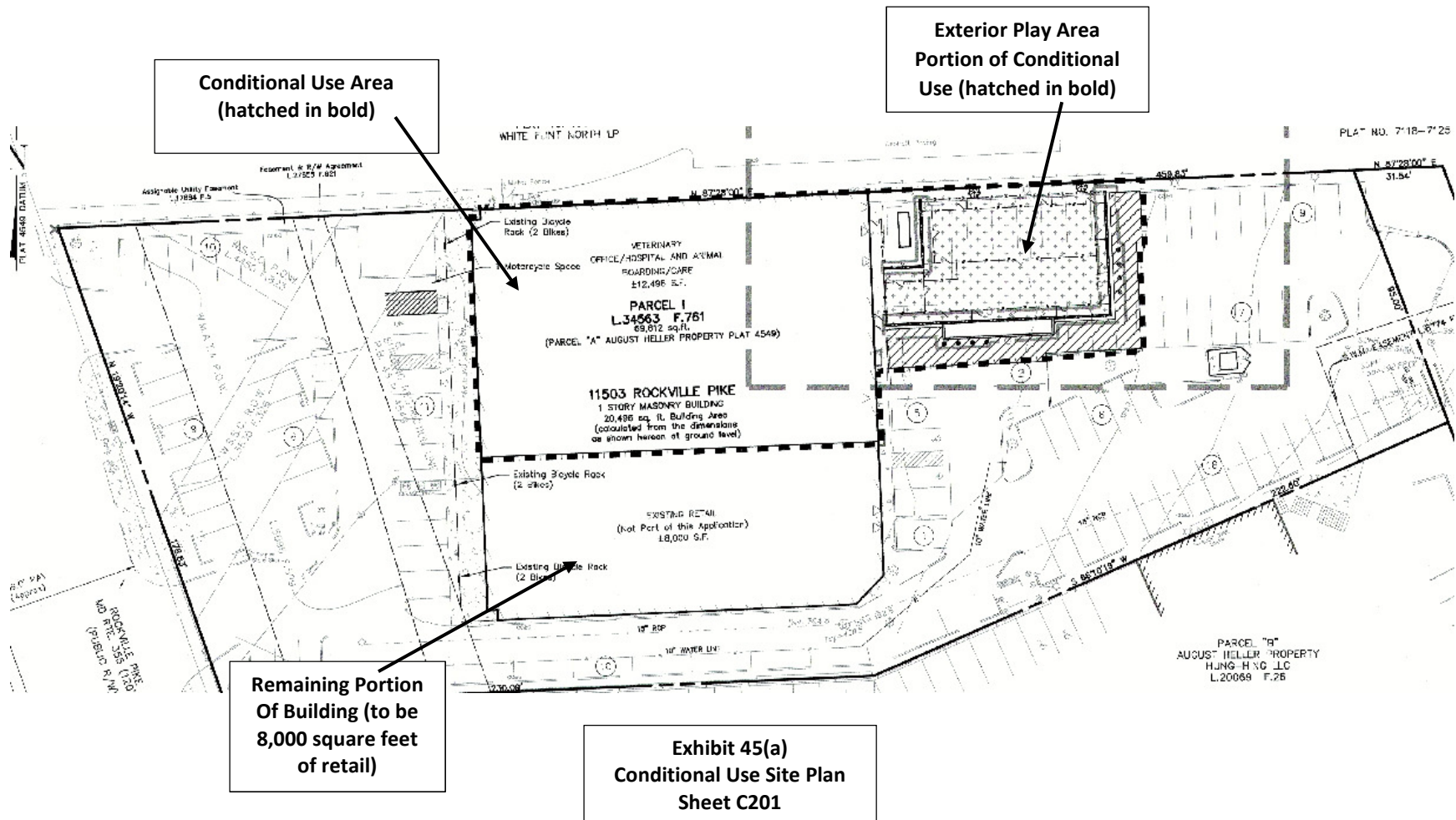
The Property Owner and the Applicant both acknowledge the proposed Conditional Use is for an interim period, until market conditions are such that the Site can be redeveloped to implement the approved Sketch Plan No. 320140010, Saul Centers White Flint.

Dr. John Wesson, a majority owner of the Applicant and a veterinarian, testified that the veterinary clinic and animal boarding and care facility will be operated in a manner similar to two other Dr. Boyd's facilities in San Diego and Irvine, California. T. 10, 13-14. Their goal is to provide a "unique resort for dogs and cats that has been designed by veterinarians and professional trainers to meet the behavioral needs of dogs and cats." T. 11. The concept differs from other boarding facilities, even those associated with veterinary clinics, because it utilizes trainers and veterinarians that continually focus on the behavioral and medical needs of the animals. T. 12. The facility is designed to permit boarded animals to move and behave normally. T. 13. The veterinary clinic will offer a full spectrum of veterinary services, including orthopedic surgery, pre/post-operative x-rays, injury care, and special medication administration. Expanded services include convalescent care, training, grooming and rehabilitation. Exhibit 26(a). Animals that are convalescing from treatment in the clinic are counted toward the limit of 200 dogs in the boarding and care facility. T. 19. Currently, the Davis facility has 8,000 square feet and the Irvine facility consists of 25,000 square feet. The capacity at the Irvine facility at peak times exceeds 200 pets.

The accessibility and transparency of Dr. Boyd's operations are also unique. The facility is open 24 hours a day, 7 days a week. Dr. Boyd was able to design the building's interior based on lessons learned in the California facilities because the building is completely vacant. T. 75. The interior will be renovated to have "state-of-the-art" operating systems that promote accessibility, ventilation, cleanliness, fire safety and "transparency in care." Exhibit 26(a), p. 5.

1. Site Plan

The land area subject to this conditional use is hatched in bold on the Conditional Use Plan (Exhibit 45(a)), shown on the following page.) Dr. Boyd does not plan to make any exterior



changes to the building. It does, however, plan to create a 3,200 square foot exterior dog exercise area by converting sixteen parking spaces on the east side of the building for this purpose.

2. Operations

The facility is designed for up to 200 dogs and cats. T. 12. A key component of the business plan is that the facility is open to pet owners 24 hours a day, 7 days a week. T. 12.

1. Staffing:

Staffing levels are based on the demand for services. At maximum levels, there will be approximately 19-20 employees for *both* the veterinary clinic and the boarding facility. This will include one veterinarian, four veterinary technicians/assistants, three to four receptionists/administrative aides, and eleven caretakers, trainers, groomers, and boarding specialists. Exhibit 26(a), p. 5. Dr. Wesson testified that they designed the shift times based on their experience in California. Because clients can drop-off and pick-up free of charge at any time of the day, many drop off their pets at 5:00 a.m. to 6:00 a.m. and pick their pets up later in the evening. They have designed the shifts to turn over at off-peak traffic periods. T. 21. The staffing and shift schedule for the boarding and care facility proposed is shown below (T. 21, 47-48, Exhibit 26(a)):

	Number of Staff	Arrival	Departure
Shift A	5	6:00 A.M.	2:00 P.M.
Shift B	7-8	1:30 P.M.	9:30 P.M.
Shift C	2	9:00 P.M.	6:30 A.M.

The Applicant states that pet owners are offered financial incentives to drop-off and pick-up pets outside of the peak period to reduce the traffic impact on nearby roadways. Exhibit 26(a), p. 5. Staff recommended a condition, which was adopted by the Planning Board, that would prohibit two employees from leaving during the morning peak period and two employees arriving

or leaving during the evening peak period. Exhibit 27(a), p. 2. The Hearing Examiner requested that the Applicant be bound by the shift schedule shown on page 11 as this is easier to enforce. Dr. Wesson agreed to such a condition. T. 21, 47-48; Exhibit 26(a).

2. Exercise Areas:

There are three interior exercise areas. These include two large areas in the northeast corner of the facility used for rehabilitation and training. A smaller area, the “break-out” and isolation rooms, are along the eastern side of the building. These areas are also used for behavioral assessments, which evaluate whether new dogs are able to behave appropriately with other dogs at the facility. T. 24. Details of these areas are shown on an Illustrative Site and Building Plan (Exhibit 34), on the next page.

According to Dr. Wesson, the outside yard serves the same function as the interior areas. It will be open from 7:00 a.m. until 9:00 p.m., but will not be used after dark. T. 32, 80. The outdoor yard has a run along the perimeter with a number of gates that provide access to smaller “break-out” areas. Break-out areas may be used for training sessions or simply to permit dogs to catch their breath. *Id.* All of the dogs are supervised 100% of the time while in the exercise areas. Because the dogs are carefully screened to be compatible with each other, it takes only one or two staff to supervise the exercise groups. According to Dr. Wesson, the “etiquette” among the dogs is entirely normal and the dogs are quiet and calm. Dogs that need direction on etiquette are not permitted to be outside. T. 25.

Not only are the dogs screened in advance, they are conditioned to recognize the facility as “neutral territory,” so territorial squabbles are reduced. For this reason, all trainers are dressed in

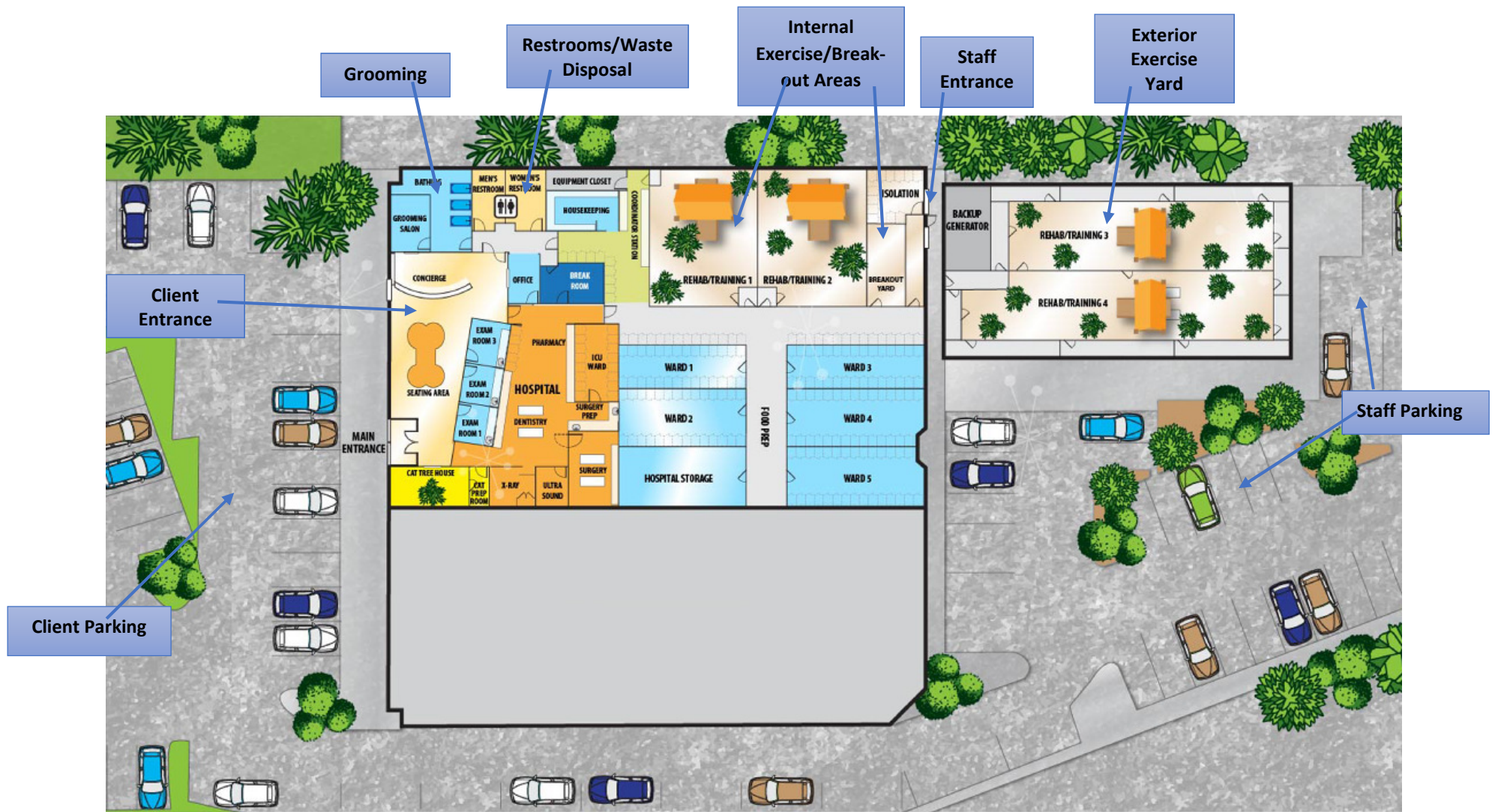


Exhibit 34
Illustrative Site and Building Plan

black so that they are easily recognized by the dogs. *Id.* Dr. Wesson agreed to a condition of approval limiting animals outside exercise to the area designated on the site plan. T. 20.

The exterior exercise yard, which is surrounded by an 8-foot high vinyl fence, has a single dog run on the north, east, and south sides. Exhibit 31(b)(iii). Five-foot high vinyl fences divide the interior into break-out areas where the dogs may rest or take a break from the action in the run. The exercise area will have picnic tables with umbrellas for the dogs to exercise on. *Id.* Up to 60 dogs per day will be permitted in the exercise area with full-time supervision by staff. While the exterior yard may accommodate up to 60 dogs, many times it has fewer, as the dogs are rotated in and out in smaller groups. T. 26.

2. Floor Plans/Interior and Exterior Circulation:

Ms. Robin Menge, an expert in commercial interior design, described the interior floor plan, shown on the Illustrative Site and Building Plan on page 14. The customer entrance is located on the west side of the building. Clients will turn left at the entrance and enter a reception area. Dog grooming and bathing facilities are located in the northwest corner of the building. Along the northern side are bathrooms (used for disposal of pet waste as well), two rehab/training rooms, an “isolation” room (for dogs that need to be separated from the play area), and an interior “breakout yard.” The southwestern quarter of the facility houses the boarding area. A staff entrance is located on the northeastern side of the building in the isolation room. T. 43-44; Exhibit 34.

3. Waste Disposal:

The surface of the outdoor exercise area consists of impervious “brush-finish” concrete. Dr. Wesson testified that, from experience, they’ve found that the best way to eliminate waste is to put it in a toilet and flush it. T. 30. Unlike other facilities, they do not store waste, but immediately remove and dispose of it. They then spot clean the area, using a product called

“WysiWash,” which is a pH neutral disinfectant that kills all of the bacterial and viral pathogens that may be harmful to animals and humans. Exhibit 26(a), p. 10; T. 30. They use an auto scrubber or mop to clean the affected area. Then the scoop used to pick up the waste is cleaned in the same disinfectant and then rests in a bucket of disinfectant. They will use a smaller version of the auto-scrubber on the exterior yard that more suited to the arrangement of that waste. Exhibits 27(a), 29, 35; T. 30-31.

3. Site Circulation, Parking and Access

The property has two access points on Rockville Pike and one on Nicholson Lane. Exhibit 45(a). Staff advises that there are 112 existing parking spaces currently on the site. Sixteen of the existing spaces will be converted for the exercise area and an additional existing space will be combined to create a van accessible parking space on the western side of the building. Exhibit 27(a), p. 12. Thus, 95 parking spaces remain to serve all uses on the property (i.e., the veterinary clinic, animal boarding facility, and remaining 8,000 square feet of retail space.) Employees will park on the east side of the building and enter through a staff-only entrance located between the interior and exterior exercise areas; clients and customers will park near the main entrance on the west side of the building. T. 42-44.

4. General Site Landscaping and Lighting

1. *Lighting.* The Applicant proposes no new exterior lighting on the property. The outside exercise area will not be lit and will be used only from 7:00 a.m. to sunset. T. 81.²

² Condition No. 7 in the Staff Report relates to lighting on the property. At the public hearing, the Applicant clarified that the condition applied to future lighting. T. 81. The Hearing Examiner cannot approve lighting fixtures not shown on the conditional use plan, *see, Concerned Citizens of Great Falls, Maryland v. Constellation-Potomac, LLC*, 122 Md. App. 700, 762 (1998). Therefore, she does not include Staff's recommended Condition No. 7 in this Decision. Should the Applicant decide to add or modify exterior lighting for the conditional use area in the future, this would be done by filing an application to modify the conditional use under Section 59-7.3.1.K of the Zoning Ordinance.

2. *Landscaping.* Existing landscaping on the site includes some shade trees and landscaped parking islands distributed on the site perimeter and throughout the parking lot. Dr. Boyd's is planning to install additional landscaping on the south side of the exercise area. Exhibit 45(b). The Applicant amended the Landscape Plan to remove a planter originally located in the southeastern corner of the exercise area. Ms. Bryant explained that waste disposal originally had been proposed through underground water drains that discharged into the storm drain system. At the request of Staff, they changed the procedures for waste disposal to the scrubber system that permitted discharge directly into the public sewer system to avoid run-off. Using scrubbers to clean the exterior, however, necessitated a harder surface (brushed concrete) than they originally envisioned. Concerns arose that the stormwater in the exercise yard would seep through the planter and under the parking lot, potentially undermining a retaining wall. Thus, they have moved the planter from the path of stormwater run-off to the southern side of the exercise yard. T. 96-97. Two hornbeam trees and several Leyland Cypress have been added on the south side of the exterior exercise area to provide shade for both the pets and Staff. An existing honey locust and maple tree will shade the north side of the area. Exhibit 45(b). A detail of the additional landscaping (Exhibit 45(b)) is shown on the following page.

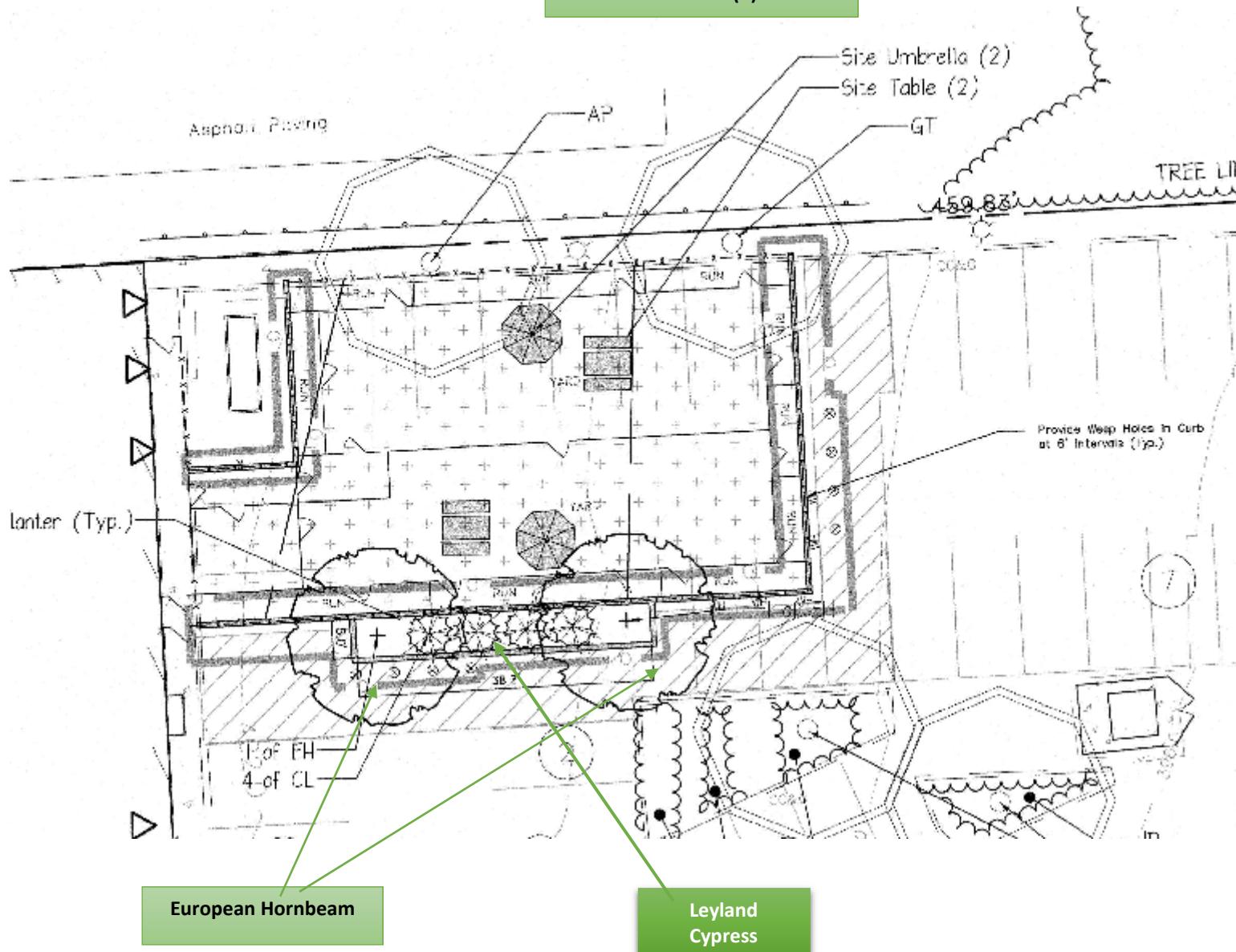
5. Signage

Dr. Boyd's will use the existing retail sign boards already in place and does not propose any new signage, except of course, for changes to the copy. T. 118.

6. Noise

Ms. Tracey Seymour, an expert in acoustical engineering, testified regarding the noise impact of the proposed use. She performed noise measurements at two locations—one on the

Landscape Plan
Exhibit 45(b)



northeast corner and one on the northwest corner of the building. At both locations, she placed a noise meter on the inside of the building and one 10 feet from the exterior wall. Based on her research, the sound of barking dogs reaches approximately 85 decibels. The first test simultaneously measured the noise levels inside and outside the facility under existing conditions. She then repeated the same measurements with noise simulating dog barking on the interior of the facility. She opined that the noise measurements did not register any transmission of noise outside of the building, nor did she actually hear the sound of the simulated dog barking. T. 86-88.

Ms. Seymour also testified regarding sound transmission through the interior wall (shared with the retail space.) Materials used to construct different types of walls have a Sound Transmission Class (STC.) The STC of the different materials measures how much the materials will reduce sound emanating from one side of the wall. The STC for the interior wall in the facility is 50. Thus, sounds at 85 decibels would be attenuated to 35 decibels on the other side of the wall. T. 86-90.

Mr. John Rubin, the chief safety officer in the two Dr. Boyd's California facilities, qualified as an expert canine specialist and dog trainer. T. 61. He opined that the dogs do not bark excessively while boarding in their facilities. He explained that staff assess the behavior of new dogs for at least 30 days, and the assessment continues as the dogs mature. The assessment determines whether the dogs may go into the outdoor or indoor play yards with other dogs or whether they will be a "play time cycle" (PTC) dog. PTC dogs are cycled into the exercise areas in small groups of compatible dogs to avoid creating a disturbance among the larger groups

According to Mr. Rubin, skilled trainers and staff actively work to reduce excessive barking. An important part of his job is to train the staff so they are able to understand the dogs. T. 71. Because Dr. Boyd's uses webcams at all his facilities, he can constantly monitor the yards

to guide staff when appropriate. Trainers employ protocols to reduce excessive barking from dogs. Staff are trained staff to assess and manage barking by noting the “pre-indicators” of this behavior in particular dogs. According to Mr. Rubin, there are three primary types of dog barking: 1) territorial or defensive barking, 2) pack/play barking, and 3) predator/prey barking. Dr. Boyd's reduces territorial barking by feeding the dogs only in their individual rooms and eliminating toys or other objects in the play area. Pack/play barking generally occurs because the dog is excited. This type of dog is not allowed in the exterior play yard. If some social barking occurs, trainers redirect the behavior using squirt guns. Alternatively, they may leash the dog and remove him from the area to reduce stress and quiet down. According to Mr. Rubin, the most common form of barking is defense barking that occurs when dogs feel the need to protect their territory. This type of barking is lessened at the facility because, unlike their homes, it is “neutral” territory. Dr. Boyd's also reduces defense barking by requiring staff to wear black uniforms to signal their identity as handlers/trainers rather than unknown intruders. T. 66-71.

D. Community Response

The record contains no opposition to this application.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. General standards are those findings that must be made for all conditional uses. *Zoning Ordinance*, §7.3.1.E. Specific standards are those which apply to the particular use requested, in this case, an animal boarding and care facility. *Id.*, §59.3.5.1.B.2.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (*see, Zoning Ordinance*, §7.1.1,) the Hearing Examiner concludes that the

conditional use proposed in this application, with the conditions imposed in Part IV of this Report and Decision, would satisfy all of the specific and general requirements for the use.

A. Necessary Findings (Article 59.7)

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E of the Zoning Ordinance. Standards pertinent to this approval, and the Hearing Examiner's standards for each finding, are set forth below:

a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;

Conclusion: The property is part of a plat recorded before a preliminary plan or site plan were required. This proposal does not add floor area to the buildings previously constructed. Because of this, no additional approvals are necessary. Exhibit 27(a), p. 10. Staff advises that the proposed use does not conflict with or require an amendment to the approved Sketch Plan and Dr. Boyd's indicates that the use is temporary until the owner develops under the Sketch Plan. This criteria has been met.

b. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;³

Conclusion: The application satisfies the requirements of Article 59-3, 59-4, and Article 59-6, discussed more fully in Parts III.B, C, and D of this Decision, respectively.

c. substantially conforms with the recommendations of the applicable master plan;

Conclusion: The property lies within the geographic area designated as the Nuclear Regulatory Commission (NRC) District by the *2010 White Flint Sector Plan* (Sector Plan or Plan.) *Plan*, pp.

³ The underlined language was added by the Council when the 2014 Zoning Ordinance was amended effective December 21, 2015, in ZTA 15-09 (Ordinance No. 18-08, adopted December 1, 2015).

42-43. Because the improvements on the property pre-existed adoption of the Plan, the “urban form” or design guidelines recommended for redevelopment under the Plan do not apply to this property. The Plan does recommend the CR Zone for the property, which permits the veterinary clinic by right and the boarding and care facility as a conditional use. *Id.* The Plan also refers to this property, among others, by stating, “These properties may be more appropriate for primarily non-residential uses.” *Plan*, p. 42.

As the use is permitted (with conditional use approval) under the zoning recommended by the Plan and language suggests that non-residential uses may be appropriate in the long-term, the Hearing Examiner finds that the use proposed substantially conforms to the Master Plan, as did Staff. Exhibit 27(a), p. 13.

d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;

Conclusion: Staff found that the proposed use met this standard, although it did not explicitly state the reason. Exhibit 27(a), p. 13. Ms. Bryant found that it was harmonious because it was surrounded primarily by other commercial uses. T. 119. The Hearing Examiner agrees with Ms. Bryant because it is permitted with a conditional use approval in the CR Zone and the character of the neighborhood includes many commercial uses. This standard has been met.

e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;

Conclusion: There are no properties within a Residential Detached zone, within the defined neighborhood. Ms. Bryant opined that the C/R Zone is considered to be a commercial, urban zone,

although it does contain multi-family uses. T. 122. -Therefore, the C/R Zone is not a Residential/Detached zone and this standard is inapplicable.

f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

Conclusion: The application does not require approval of a preliminary plan of subdivision. Exhibit 18, p. 14. Therefore, the Hearing Examiner must determine whether road and transit capacity is adequate under Section 50-35(k), as implemented by the Subdivision Staging Policy (Council Resolution 18-671, adopted on November 15, 2017). Local Area Transportation Review (LATR) guidelines control the method of forecasting the demand on different modes (i.e., transit, vehicle, etc.) of travel generated by proposed development during “peak periods” of travel. That projection is then compared it to the capacity of existing and programmed roads and transit to determine whether there are sufficient public facilities in the applicable geographic (or “policy”) area. *Local Area Transportation Review Guidelines, Spring, 2017 (LATR Guidelines)*. The total trips projected for the area takes into account new trips generated by the proposed use, existing

trips on the road, and trips from development that is approved, but is not yet built. Applications that are expected to generate fewer than 50 trips are exempt from LATR review, but must submit a "Transportation Study Exemption Statement" to demonstrate that the number generated by the proposal will be under 50-trip maximum. *LATR Guidelines*, p. 17.

Dr. Boyd's expert in transportation planning and traffic engineering, Mr. David Nelson, opined that the proposed use generated fewer trips than the prior "specialty retail" (i.e., Staples) store. According to him, there are no standardized trip generation rates for animal boarding and care facilities. T. 53. Because the employee shifts (described in Part II.C.2 of this Report) begin and end outside of the peak hour, these trips are not counted for the purpose of LATR. In addition, the property is within 800 feet of the White Flint Metro Station, reducing the potential for employees to travel to work by vehicle. T. 52.

The question remaining to be answered is the extent to which pick-up and drop-off of pets will occur during the peak period. To determine whether these activities generate fewer trips than the former specialty retail use, Mr. Nelson looked at all three uses proposed by Dr. Boyd: the veterinary hospital, which is not part of this application, the daycare, and the animal boarding. After discussions with Dr. Boyd and Dr. Wesson, he determined that 60% of the Applicant's business is attributable to the boarding and care facility, and 20% each to the daycare and the veterinary hospital. He then took the total capacity for dogs in all three uses and attributed a specific number of dogs to each based on the business percentage assigned. T. 54.

Mr. Nelson then estimated a trip generation rate for each use. He opined that daily trips for the boarding facility would be 2 trips per dog per day for the boarding and care facility (although dogs typically stay multiple days), 2 trips per dog per day for the hospital patients, and

4 trips per dog per day for the daycare. Exhibit 26(b). He then discounted these generation rates by 25% to account for families that brought multiple dogs in one vehicle.

To reach the number of trips generated during the peak hour, he assumed a 50% increase in the average number of trips over the period of time the facility was open each day. Using this approach, he estimated that there would be 29 total peak hour trips from all three uses. Exhibit 26(b). These findings are summarized in the following chart from the Applicant's Traffic Statement (Exhibit 26(b)):

		DAILY TRIPS	PEAK HOUR TRIPS
<u>Existing Use</u>			
Specialty Retail	12,496 sf	554	85 AM / 34 PM
<u>Proposed Use</u>			
Total Capacity	200 Dogs		
Hospital Patients*	40 Dogs (@ 20%)	60*	10*
Boarding	120 Dogs (@ 60%)	180	11
Day Care	40 Dogs (@ 20%)	120	8
Employee/ Delivery		55	0
TOTAL		415	29
Net Difference		-139	-5

Mr. Nelson opined that these estimates are conservative for several reasons. First, they do not account for intercept trips (trips already on the roadway that stop at the site before proceeding to their destination.) Second, the generation rates assume that the facility will be at full capacity every day. Finally, the trip generation rates assume that dogs in the boarding facility (at full capacity) will arrive/depart every day, rather than staying multiple days. T. 51-59; Exhibit 26(b).

Based on this evidence of record, the Hearing Examiner finds that traffic generated by the use will be under 50 trips, and therefore, does not require further LATR review. As this finding is based in part on the fact that employee shifts will occur outside the peak hour, she will make the number of employees and timing of these shifts a condition of approval.

Section 59.7.3.1.E.1.F of the Zoning Ordinance requires a finding that other public facilities are adequate to serve the conditional use, including schools, police and fire protection, and storm drainage. Staff reported that the use will have no impact on schools because it is not a residential use. Exhibit 27(a), p. 14. A stormwater management concept plan is not required because Dr. Boyd will not expand the building (i.e., it is grandfathered from new stormwater management requirements) and land disturbance for the outdoor exercise area will be less than 5,000 square feet, which is exempt from stormwater management requirements. *Id.* Ms. Bryant, the Applicant's expert in land planning, testified that other public facilities will be adequate to serve the proposed use. The property is presently served by existing public water and sewer and police and fire services are adequate. T. 120.

Based on the uncontroverted evidence in this case, the Hearing Examiner finds that public facilities will be adequate to serve the proposed use.

g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;*
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or*
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.*

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §1.4.2. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a conditional use. Planning Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment.

Analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an animal boarding and care facility. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics identified *or* adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects then must be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Staff found that typical operational characteristics of animal boarding and care conditional use includes: “(1) vehicular trips to and from the site based on its 24 hour-a-day, seven days a week; (2) the elimination and conversion of 16 existing parking spaces for an outdoor

exercise area and dog run, including an area where dogs will relieve themselves; (3) episodic noise from barking dogs in interior and outdoor exercise areas and the inside boarding area; and (4) odor in the outdoor exercise yard's dog relief area." *Id.* at 14.

The Hearing Examiner agrees with most of Staff's conclusions, but disagrees that a typical boarding and care facility is open for 24 hours. Thus, this aspect would *not* be an inherent aspect of an animal and boarding care facility. For the purposes of this analysis, the proposed use is compared to inherent characteristics of typical boarding and day care uses. The Applicant itself recognizes that the 24-hour operation is unique, and would therefore not be an inherent characteristic for an animal boarding and day care facility. T. 12. Similarly, the *conversion of 16 existing parking spaces* for an outdoor exercise area is not inherent in every animal boarding and day care facility, although outdoor exercise areas are typically associated with such facilities

In OZAH Case No. CU 15-03, the Hearing Examiner found (based on recommendations from Staff), that the following were characteristics inherent in a typical animal boarding and care facility (*Hearing Examiner's Report and Recommendation*, CU 15-03, Dog's Day Pet Care, Inc., pp. 34-35): (1) a property with indoor and outdoor spaces sufficient to accommodate daily and overnight care of the proposed number of animals; (2) traffic to and from the site by clients and staff; (3) sufficient space for efficient transfer of animals during delivery and pick up; (4) buildings and outdoor spaces far enough from neighboring structures to reduce noise from groups of animals; (5) specified procedures for animal waste, and (6) access to the site sufficient to accommodate efficient traffic circulation entering and exiting the site for pet drop-off and pick-up. The Hearing Examiner adopts those standards here.

Based on the above, the facility's 24-hour operation is a non-inherent operational characteristic. Simply having a non-inherent characteristic doesn't warrant denial of the use,

because it also must have an undue adverse impact on the surrounding community. Nothing in this record reflects that it will do so. In fact, the record reflects that 24-hour a day operations will alleviate the traffic impact of the proposed facility by reducing the number of trips during the peak hour.

The Hearing Examiner finds that the remaining impacts are inherent to the use. At the request of Staff, Dr. Boyd's has modified its outside waste disposal method so that none of the cleaning agents for pet waste are discharged into the stormwater system. Trips to and from the site are under the amount generated by the previous use of the site and the property is served by three access points along Nicholson Lane and Rockville Pike. Parking is adequate for the use, and there are a sufficient number of spaces at the building's main entrance (on the west side of the property) to accommodate pet drop-off and pick-up, which will be distributed throughout a 24-hour period. Pet drop-off occurs on the western side of the site, away from the nearest residential buildings (i.e., the condominium located to the northeast) and away from longer-term staff parking.

At the public hearing, Dr. Boyd's presented expert testimony that noise from dogs barking would be well under the decibel levels required by *Montgomery County Code*, Chapter 31B, which is discussed more fully in Part III.B of this Report. Based on all of the evidence, the Hearing Examiner finds that the one non-inherent characteristic of the use does not warrant denial of the application.

2. *Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.*

Conclusion: The C/R Zone is not a Residential Detached zone, therefore, this standard is inapplicable to this application. *Compare, Zoning Ordinance, §§59-2.1.3.C and 59-2.1.3.D.*

3. *The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the*

use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.

Conclusion: The Applicant has presented substantial evidence that the proposed use at this location satisfies all specific requirements for the conditional use, and with the conditions imposed to mitigate adverse impacts, meets the standards required for approval.

4. In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.

Conclusion: Staff found this standard is inapplicable to the application because the Zoning Ordinance classifies an animal boarding and care facility as a commercial rather than an agricultural use. Exhibit 27(a), p. 15. The Hearing Examiner agrees and so finds.

B. Standards Specific to Animal Boarding and Care Facilities (Article 59.3)

The specific standards for approval of an animal boarding and care facility are set out in Section 59.3.5.1.B.2.b of the Zoning Ordinance. Standards applicable to this application are:

*1. Defined
Animal Boarding and Care means the structures or land used for the boarding, breeding, or care of dogs, cats, pets, fowl, or other domestic animals at a location other than a Veterinary Office/Hospital, not including animals raised for agricultural purposes.*

Conclusion: The facility will be used for the boarding and care of dogs and cats. T. 12. The veterinary hospital is not part of this application. The proposed use meets the definitional requirements.

2.b.ii. In the Commercial/Residential and Employment zones any part of a building used for animal boarding or care must be soundproofed.

Conclusion: Staff concluded that the proposed use met this standard because (Exhibit 27(a), p. 11):

The Floor Plan shows that walls of all interior boarding space will be reinforced with Sound Attenuation Batts (SABs) that consist of light weight, flexible fiberglass insulation material designed to deliver noise control in metal stud wall cavities of interior partitions.

At the public hearing, Dr. Boyd's expert in acoustical engineering testified that she conducted noise tests at the northwestern and northeastern corners of the property and could not detect elevated sound levels from noise equivalent to that of barking dogs inside the building. She also testified that the interior wall materials would reduce the typical noise level of barking dogs (i.e., 85 dBA) to approximately 30 dBA. Based on this evidence, the Hearing Examiner finds that the facility will generate noise well under the maximums permitted by Chapter 31B of the Montgomery County Code.

- iii. *In the CRT, CR, and NR zones an outdoor exercise yard is allowed if:*
 - (a) *it is fenced and set back a minimum of 50 feet from any Residential zone; and*
 - (b) *any animal is prohibited from being outdoors between 9:00 p.m. and 7:00 a.m.*

Conclusion: The Applicant's expert land planner, Ms. Bryant, testified that the CR Zone is considered a commercial rather than a residential zone because it is intended for more urban locations. T. 122. As all surrounding properties are within the CR Zone rather than a residential zone, the requirement for a 50-foot setback does not apply. A condition of approval prohibits outdoor activity between 9:00 p.m. and 7:00 a.m. Therefore, the use as proposed meets this requirement.

C. Development Standards of the Zone (Article 59.4)

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the CR Zone, contained in Article 59.4 of the Zoning Ordinance. Staff did not address the development standards of the CR Zone, finding that both the

structure and the site design were exempt under Section 59-7.7.1.A of the Zoning Ordinance. Exhibit 27(a), p. 10. The Hearing Examiner agrees that the building is grandfathered from meeting current development standards, but finds that the new exterior play area must meet these requirements. Section 59-7.7.1.A.1 of the Zoning Ordinance states:

A legal structure or site design existing on October 30, 2014 that does not meet the zoning standards on or after October 30, 2014 is conforming and may be continued, renovated, repaired, or reconstructed if the floor area, height, and footprint of the structure are not increased, except as provided for in Section 7.7.1.C for structures in Commercial/Residential, Employment, or Industrial zones, or Section 7.7.1.D.5 for structures in Residential Detached zones.

The Zoning Ordinance defines "Site Design" as, "[t]he external elements between and around structures that give shape to patterns of activity, circulation, and form. Site design includes landforms, driveways, parking areas, roads, sidewalks, trails, paths, plantings, walls or fences, water features, recreation areas and facilities, lighting, public art, or other external elements." *Zoning Ordinance*, §1.4.2.

The Hearing Examiner agrees that the building and parking that will remain *unaltered* are grandfathered under Section 59-7.7.1.A. Staff states there is "no evidence" that the existing structures were built illegally, indicated further by the fact that the existing development complies with the development standards of the zone in effect at the time it was developed. Exhibit 27(a), p. 10.

The exercise area, however, is new and the 8-foot high fence surrounding it must comply with the setbacks and height required by the CR Zone because it is an accessory structure. T. 104. Testimony presented by Ms. Bryant at the public hearing indicates that it does so. She opined that the proposed use is a general building type under §59-4.1.5.F of the Zoning Ordinance. The setback for accessory structures associated with general building types in the CR Zone is 0 feet. *Zoning Ordinance*, §59-4.5.3.C.3. The height limit for accessory structures is equal to the height

permitted in the Zone (i.e., 300 feet), subject to compability requirements of §59-4.1.8.b (not applicable to this case). The Hearing Examiner finds that the exercise area complies with all applicable development standards of the CR Zone.

D. General Development Standards (Article 59-6)

Article 59-6 sets requirements for site access, parking, screening, landscaping, lighting, and signs. Because much of the existing site design is grandfathered and need not comply with current standards, the Hearing Examiner will address the only standard of Article 6 that is applicable to this conditional use, which are the parking requirements of Division 59-6.2 of the Zoning Ordinance.⁴

While the configuration of the parking and loading spaces is grandfathered, the Applicant must still provide the number of spaces required for the new use. The evidence reflects that the application does so. Because the property is within the CR Zone and within one mile of the White Flint Metro Station, it qualifies as a “Reduced Parking Area” under the Zoning Ordinance. *Zoning Ordinance*, §59-1.4.2. The number of parking spaces within a reduced parking area may range from a minimum to a maximum number. The range for animal boarding and care facilities is between 1 and 3 spaces per employee. *Id.*, §59-6.2.4. Staff advises that the required range for all uses on the property (including the veterinary clinic) is between 95 and 107 spaces. Exhibit 27(a), p. 11. A chart from the Staff Report (Exhibit 27(a), p. 11, shown on the following page) demonstrates Staff’s basis for determining this range.

⁴ Article 6 requirements relating to site access, perimeter site landscaping, parking lot landscaping, and signage do not apply to this application because these aspects are grandfathered as existing “site design,” as already noted. Zoning Ordinance regulations governing outdoor lighting apply only to new lighting, which the Applicant is not installing. T. 80.

Development Standards	Required/Permitted	Proposed
Vehicle Parking Section 6.2.4.B		
Veterinary Office/Hospital (9,997 s.f.)		
Employee (5.5 maximum per shift)	1.00/employee = 6 spaces min. 2.50/employee = 14 spaces max	
Doctors practicing simultaneously (1.0)	2.0/doctor = 2 spaces min.	
	3.5/doctor = 4 spaces max.	
Animal Boarding/Care (2,499 s.f.)	1.00/employee = 14 spaces min.	
13.5 employees maximum per shift)	3.00/employee = 41 spaces max.	
Existing retail (up to 8,000 s.f.)	3.5/1,000 s.f. (min.) = 28 spaces	
	6.0/1,000 s.f. (max.) = 48 spaces	
Total		
	50 spaces (min.)	
	107 spaces (max.)	95 spaces ²
Bicycle Parking Spaces (Section 6.2.4)	N/A	N/A

Parking Calculations
Exhibit 27(a), p. 11

Staff determined that parking will be adequate for all uses on the site because the number of spaces fell within the required range. In response to questions from the Hearing Examiner, Mr. Wesson testified that he believed that 95 spaces would adequately serve the use because pet drop-off and pick-up is spread throughout a 24 hour period and takes only approximately one to five minutes to accomplish. T. 101. Ms. Bryant pointed out that the 95 spaces available was just shy of the middle end of the range. In her opinion, the number of spaces actually needed for the 8,000 retail space (unrelated to the veterinary hospital and boarding and care facility) would be at the lower end of the range because the maximum number of spaces is more typically required for large scale retail uses, such as box stores. T. 101. She also pointed out that parking for the boarding facility and day care turns over quickly--it takes only between one and five minutes to drop-off and pick-up animals. T. 101. There are four ADA-compliant spaces, one of which is van accessible, one motorcycle parking space, and racks in front of the main entrance for three bicycle spaces. T. 111, 117; Exhibit 45.

Staff advises that the proposed use does not have a minimum bicycle parking requirement because “animal boarding and care facilities” is not one of the listed uses under the bicycle parking tabulations table in Section 59-6.2.4.C. Nevertheless, the Applicant has agreed to show three existing bicycle storage spaces in its revised Conditional Use Plan (Exhibit 45(a).)⁵

Based on the above evidence, the Hearing Examiner finds that the application conforms to all applicable general development standards contained in Article 59-6 of the Zoning Ordinance.

IV. Decision

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of DBVR Rockville LP d/b/a Dr. Boyd's Veterinary Resort, for a conditional use to operate an animal boarding and care facility at 11503 Rockville Pike, Rockville, Maryland, under Section 59.3.5.1.B of the Zoning ordinance is ***granted***, subject to the following conditions:

1. The facility is limited to a maximum 12,496-square-foot cat and dog boarding and care facility for no more than 200 pets.
2. Petitioner must comply with the terms of its revised Conditional Use Plan (Exhibits 45(a), 31(b)(ii) and 31(b)(iii) and Landscape Plan (Exhibit 45(b)).
3. Hours of operation are 24 hours per day, 7 days a week.
4. No more than 60 dogs may be exercised in the outdoor exercise area at one time.
5. No animals are permitted outside between 9:00 p.m. and 7:00 a.m. on any day.
6. No new exterior lighting may be installed on the property without modifying the conditional use approval.
7. No more than two employees may leave the facility within the weekday morning peak period (6:30 to 9:30 a.m.) and no employees may arrive or leave (unless in the event of an emergency) within the weekday evening peak period (4:00 to 7:00 p.m.)
8. Outdoor exercise of dogs must occur only within the outdoor exercise area shown on the Site Plan (Exhibits 45(a), 31(b)(ii), 31(b)(iii).

⁵ To the Hearing Examiner, it seems counterintuitive that a use this close to the Metro would not be required to have vehicle parking spaces. Nevertheless, there is nothing to counter this interpretation in the record.

9. Employee shifts shall be as follows:

	Maximum Number of Staff	Arrival	Departure
Shift A	5	6:00 a.m.	2:00 p.m.
Shift B	8	1:30 p.m.	9:30 p.m.
Shift C	2	9:00 p.m.	6:30 a.m.

10. No new exterior lighting may be installed on the property without modifying the conditional use approval.
11. The waste and runoff from the outdoor exercise yard must not be directly or intentionally discharged into a storm drain or other channel that may drain to the local stream. The Applicant must implement the animal waste management, clean-up and disposal protocols described in the revised Statement of Justification, dated June 22, 2017 (Exhibit 26(a)).
12. Prior to issuance of the Certificate of Occupancy, all landscaping on the Applicant's Landscape Plan must be planted as shown.
13. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.



Lynn A. Robeson
Hearing Examiner

Issued this 21st day of September, 2017.

NOTICE OF RIGHT TO REQUEST ORAL ARGUMENT

Any party of record may file a written request to present an appeal and oral argument before the Board of Appeals, within 10 days after the Office of Zoning and Administrative Hearings issues

the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Contact information for the Board of Appeals is listed below, and additional procedures are specified in Zoning Ordinance §59.7.3.1.F.1.c.

The Board of Appeals may be contacted at:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <http://www.montgomerycountymd.gov/boa/>.

NOTICES TO:

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